

AMENDED IN SENATE SEPTEMBER 4, 2009

AMENDED IN SENATE SEPTEMBER 2, 2009

AMENDED IN SENATE AUGUST 26, 2009

AMENDED IN SENATE JUNE 30, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 737

Introduced by ~~Committee on Environmental Safety and Toxic Materials (Chesbro (Chair), Miller (Vice Chair), Davis, Feuer, Monning, Ruskin, and Smyth)~~ Assembly Member Chesbro

February 26, 2009

An act to amend Sections 25251, 25257, 116450, 116455, and 116470 of the Health and Safety Code, relating to environmental safety. An act to amend Sections 41730, 41731, 41734, 41735, 41736, 41800, and 42926 of, to add Sections 40004, 41734.5, and 41780.01 to, and to add Chapter 12.8 (commencing with Section 42649) to Part 3 of Division 30 of, the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 737, as amended, ~~Committee on Environmental Safety and Toxic Materials~~ Chesbro. ~~Environmental safety: public water systems: public notification: Toxics Information Clearinghouse.~~ *Solid waste: diversion.*

(1) The California Integrated Waste Management Act of 1989, which is administered by the California Integrated Waste Management Board, requires each city, county, and regional agency, if any, to develop a source reduction and recycling element of an integrated waste management plan containing specified components, including a source reduction component, a recycling component, and a composting

component. With certain exceptions, the source reduction and recycling element of that plan is required to divert 50% of all solid waste from landfill disposal or transformation by January 1, 2000, through source reduction, recycling, and composting activities.

Existing law requires the board to review, at least once every 2 years, a jurisdiction's source reduction and recycling element and household hazardous waste element. The board is required to issue an order of compliance if the board finds that a jurisdiction has failed to implement its source reduction and recycling element or its household hazardous waste element, pursuant to a specified procedure. If, after issuing an order of compliance, the board finds the city, county, or regional agency has failed to make a good faith effort to implement those elements, the board is authorized to impose administrative civil penalties upon the city, county, or regional agency.

This bill would require the board, on January 1, 2020, and annually thereafter, to ensure that 75% of all solid waste generated is source reduced, recycled, or composted. The bill would prohibit the board from imposing any enforceable requirements against a local agency or a solid waste enterprise or that includes aspects of solid waste handling that are of local concern to implement this 75% diversion level.

(2) Existing law requires a local agency to impose certain requirements on an operator of a large venue or event to facilitate solid waste reduction, reuse, and recycling.

This bill would require the owner or operator of a business that contracts for solid waste services and generates more than 4 cubic yards of total solid waste and recyclable materials per week to take specified action by January 1, 2011.

The bill would require a jurisdiction to implement a commercial recycling program meeting specified elements but would not require the jurisdiction to revise its source reduction and recycling element if the jurisdiction adds or expands a commercial recycling program to meet this requirement. By requiring a jurisdiction to implement a commercial recycling program, this bill would impose a state-mandated local program.

The bill would require the board to review a jurisdiction's compliance with the above requirement as a part of the board's review of a jurisdiction's compliance with the 50% solid waste diversion requirement.

(3) Existing law requires a city, county, and city and county to incorporate the nondisposal facility element and any amendment to the

element into the revised source reduction and recycling element at the time of the 5-year revision of the source reduction and recycling element. Existing law requires the board to review an amendment to a nondisposal facility element. Existing law requires a local task force to review and comment on amendments to a nondisposal facility element.

This bill would repeal those requirements. The bill would instead require a city, county, city and county, or regional agency to update all information required to be included in the nondisposal facility element. The bill would provide that the update is not subject to approval by the board or comment and review by a local task force.

(4) Existing law requires each state agency to submit an annual report to the board summarizing its progress in reducing solid waste that is due on September 1 of each year starting in 2010.

This bill would change the due date to May 1 of each year.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law, known as the California Safe Drinking Water Act, requires the State Department of Public Health to administer provisions relating to the regulation of drinking water to protect public health, including, but not limited to, conducting research, studies, and demonstration programs relating to the provision of a dependable, safe supply of drinking water, enforcing the federal Safe Drinking Water Act, adoption of enforcement regulations, and conducting studies and investigations to assess the quality of water in domestic water supplies.~~

~~Existing law requires every public water system to notify users when certain monitoring or other requirements have not been complied with, to notify customers when a failure to comply with a primary drinking water standard represents an imminent danger, to notify consumers of confirmation of detected contaminants, and to annually deliver a prescribed consumer confidence report to each consumer.~~

~~This bill would, in addition, require posting of the notices and reports on the public water system's Internet Web site, if the public water system maintains an Internet Web site. The bill would permit the public water system, except when issued a Tier 1 notice, as defined, to remove or supplement the posted information when certain conditions are met.~~

~~Existing law requires the Department of Toxic Substances Control to establish a Toxics Information Clearinghouse for the collection, maintenance, and distribution of specific chemical hazard traits and environmental and toxicological end-point data and defines “consumer product” for purposes of these provisions.~~

~~This bill would correct spelling errors and make other technical conforming changes to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. (a) *The Legislature finds and declares both of*
2 *the following:*

3 (1) *Since the enactment of the California Integrated Waste*
4 *Management Act of 1989 (Division 30 (commencing with Section*
5 *40000) of the Public Resources Code), local governments and*
6 *private industries have worked jointly to create an extensive*
7 *material collection and recycling infrastructure and have*
8 *implemented effective programs to achieve a statewide diversion*
9 *rate above 50 percent.*

10 (2) *Although the state now leads the nation in solid waste*
11 *reduction and recycling, the state continues to dispose of more*
12 *than 40 million tons of solid waste each year, which is more than*
13 *the national average on a per capita basis. Additional efforts must*
14 *be undertaken to divert more solid waste from disposal in order*
15 *to conserve scarce natural resources.*

16 (b) *The Legislature further finds and declares all of the*
17 *following:*

18 (1) *Approximately 64 percent of the state’s solid waste disposal*
19 *is from commercial sources, including commercial, industrial,*
20 *construction, and demolition activities. In addition, 8 percent of*
21 *the state’s solid waste disposal is from multifamily residential*
22 *housing that is often collected along with the commercial waste*
23 *stream.*

24 (2) *The state’s local governments have made significant progress*
25 *in reducing the amount of solid waste disposal from single-family*
26 *residential sources that make up 28 percent of the state’s disposal,*
27 *but have faced more challenges in reducing disposal from the*
28 *commercial and multifamily sources.*

1 (3) *The disposal of recyclable materials in the commercial solid*
2 *waste stream prevents materials from circulating in the state*
3 *economy to produce jobs and new products. Reducing the disposal*
4 *of these materials will conserve landfill capacity and contribute*
5 *to a reduction in greenhouse gas emissions and climate change.*

6 (4) *The state has long been a national and international leader*
7 *in environmental stewardship efforts and mandating the diversion*
8 *of solid waste away from disposal. Bold environmental leadership*
9 *and a new approach are needed to divert commercial solid waste*
10 *away from disposal.*

11 (5) *By exercising a leadership role, the state will lead the*
12 *business community toward a future in which the environment and*
13 *the economy both grow stronger together by recycling materials,*
14 *which creates new jobs, instead of burying resources, which exit*
15 *the economy forever.*

16 (6) *By requiring commercial recycling, the state will help*
17 *businesses reduce costly disposal fees and reclaim valuable*
18 *resources.*

19 SEC. 2. *Section 40004 is added to the Public Resources Code,*
20 *to read:*

21 40004. (a) *The Legislature finds and declares all of the*
22 *following:*

23 (1) *Solid waste diversion and disposal reduction require the*
24 *availability of adequate solid waste processing and composting*
25 *capacity.*

26 (2) *The existing network of public and private solid waste*
27 *processing and composting facilities provides a net environmental*
28 *benefit to the communities served, and represents a valuable asset*
29 *and resource of this state, one that must be sustained and expanded*
30 *to provide the additional solid waste processing capacity that will*
31 *be required to achieve the additional solid waste diversion targets*
32 *expressed in Section 41780.01 and the commercial recycling*
33 *requirement expressed in Section 42649.*

34 (3) *The provisions in existing law that confer broad discretion*
35 *on local agencies to determine aspects of solid waste handling*
36 *that are of local concern have significantly contributed to the*
37 *statewide diversion rate exceeding 50 percent, and further progress*
38 *toward decreasing solid waste disposal requires that this essential*
39 *element of local control be preserved.*

1 (b) It is the intent of the Legislature to encourage the
2 development of the additional solid waste processing and
3 composting capacity that is needed to meet state objectives for
4 decreasing solid waste disposal by identifying incentives for local
5 governments to locate and approve new or expanded facilities that
6 meet and exceed their capacity needs, and to recognize local
7 agencies that make significant contributions to the state's overall
8 solid waste reduction and recycling objectives through the siting
9 of facilities for the processing and composting of materials diverted
10 from the solid waste stream.

11 (c) By setting a new solid waste diversion target in Section
12 41780.01 and new commercial waste recycling requirements in
13 Section 42649, the Legislature does not intend to limit a right
14 afforded to local governments pursuant to Section 40059, or to
15 modify or abrogate in any manner the rights of a local government
16 or solid waste enterprise with regard to a solid waste handling
17 franchise or contract.

18 SEC. 3. Section 41730 of the Public Resources Code is
19 amended to read:

20 41730. Except as provided in Section 41750.1, each city shall
21 prepare, adopt, and, except for a city and county, transmit to the
22 county in which the city is located a nondisposal facility element
23 that includes all of the information required by this chapter and
24 that is consistent with the implementation of a city source reduction
25 and recycling element adopted pursuant to this part.—The
26 nondisposal facility element and any amendments to the element
27 may be appended to the city's source reduction and recycling
28 element when that element is included in the countywide integrated
29 waste management plan, prepared pursuant to Section 41750. The
30 nondisposal facility element and any ~~amendments~~ updates to the
31 element shall not be subject to the approval of the county and the
32 majority of cities with the majority of the population in the
33 incorporated area.

34 SEC. 4. Section 41731 of the Public Resources Code is
35 amended to read:

36 41731. Except as provided in Section 41750.1, each county
37 shall prepare, adopt, and, except for a city and county, transmit to
38 the cities located in the county a nondisposal facility element that
39 includes all of the information required by this chapter and that is
40 consistent with the implementation of a county source reduction

1 and recycling element adopted pursuant to this part.—The
2 nondisposal facility element and any amendments to the element
3 may be appended to the county's source reduction and recycling
4 element when that element is included in the countywide integrated
5 waste management plan prepared pursuant to Section 41750. The
6 nondisposal facility element and any amendments *updates* to the
7 element shall not be subject to the approval of the majority of cities
8 with the majority of the population in the incorporated area.

9 *SEC. 5. Section 41734 of the Public Resources Code is*
10 *amended to read:*

11 41734. (a) (1) Prior to adopting ~~or amending~~ a nondisposal
12 facility element, the city, county, or regional agency shall submit
13 the element ~~or amendment~~ to the task force created pursuant to
14 Section 40950 for review and comment.

15 (2) Prior to adopting ~~or amending~~ a regional agency nondisposal
16 facility element, if the jurisdiction of the regional agency extends
17 beyond the boundaries of a single county, the regional agency shall
18 submit the element ~~or amendment~~ for review and comment to each
19 task force created pursuant to Section 40950 of each county within
20 the jurisdiction of the regional agency.

21 (b) Comments by the task force shall include an assessment of
22 the regional impacts of potential diversion facilities and shall be
23 submitted to the ~~city~~, city, county, or regional agency and to the
24 board within 90 days of the date of receipt of the nondisposal
25 facility element for review and comment.

26 *SEC. 6. Section 41734.5 is added to the Public Resources Code,*
27 *to read:*

28 41734.5. (a) *Once a nondisposal facility element has been*
29 *adopted, the city, county, or regional agency shall update all*
30 *information required to be included in the nondisposal facility*
31 *element, including, but not limited to, new information regarding*
32 *existing and new, or proposed nondisposal facilities.*

33 (b) *Updates shall be provided to the board within 30 days of*
34 *any change in information.*

35 (c) *Copies of the updated information shall also be provided to*
36 *the local task force and shall be appended or otherwise added to*
37 *the nondisposal facility element.*

38 (d) *The local task force shall not be required to review and*
39 *comment on the updates to the nondisposal facility elements.*

1 (e) Updates to the nondisposal facility elements are not subject
2 to approval by the board.

3 SEC. 7. Section 41735 of the Public Resources Code is
4 amended to read:

5 41735. (a) Notwithstanding Division 13 (commencing with
6 Section 21000), the adoption or ~~amendment~~ update of a
7 nondisposal facility element shall not be subject to environmental
8 review.

9 (b) Local agencies may impose a fee on project proponents to
10 fund their necessary and actual costs of preparing and approving
11 ~~amendments~~ updates to nondisposal facility elements.

12 SEC. 8. Section 41736 of the Public Resources Code is
13 amended to read:

14 41736. It is not the intent of the Legislature to require cities
15 and counties to revise their source reduction and recycling elements
16 to comply with the requirements of this chapter. ~~At the time of the~~
17 ~~five-year revision of the source reduction and recycling element,~~
18 ~~each city, county, and city and county shall incorporate the~~
19 ~~nondisposal facility element and any amendments thereto into the~~
20 ~~revised source reduction and recycling element.~~

21 SEC. 9. Section 41780.01 is added to the Public Resources
22 Code, to read:

23 41780.01. On or before January 1, 2020, and annually
24 thereafter, the board shall ensure that 75 percent of solid waste
25 generated is source reduced, recycled, or composted. In
26 implementing this section, the board shall not include any
27 requirements that are enforceable against a local agency or solid
28 waste enterprise, or that includes aspects of solid waste handling
29 that are of local concern.

30 SEC. 10. Section 41800 of the Public Resources Code is
31 amended to read:

32 41800. (a) Except as provided in subdivision (b), within 120
33 days from the date of receipt of a countywide or regional integrated
34 waste management plan ~~which~~ that the board has determined to
35 be complete, or any element of the plan ~~which~~ that the board has
36 determined to be complete, the board shall determine whether the
37 plan or element is in compliance with Article 2 (commencing with
38 Section 40050) of Chapter 1 of Part 1, Chapter 2 (commencing
39 with Section 41000), and Chapter 5 (commencing with Section

41750), and, based upon that determination, the board shall approve, conditionally approve, or disapprove the plan or element.

(b) (1) Within 120 days from the date of receipt of a city, county, or regional agency nondisposal facility element, ~~which that~~ the board has determined to be complete, ~~and within 60 days from the date of receipt of an amendment to a city, county, or regional agency nondisposal facility element,~~ the board shall determine whether the element, ~~which that~~ the board has determined to be complete, ~~or amendment~~ is in compliance with Chapter 4.5 (commencing with Section 41730) and Article 1 (commencing with Section 41780) of Chapter 6, and, based upon that determination, the board shall approve, conditionally approve, or disapprove the element ~~or amendment~~ within that time period.

(2) In reviewing the element ~~or amendment~~, the board shall:

(A) Not consider the estimated capacity of the facility or facilities in the element ~~or amendment~~ unless the board determines that this information is needed to determine whether the element ~~or amendment~~ meets the requirements of Article 1 (commencing with Section 41780) of Chapter 6.

(B) Recognize that individual facilities represent portions of local plans or programs that are designed to achieve the diversion requirements of Section 41780 and therefore may not arbitrarily require new or expanded diversion at proposed facilities.

(C) Not disapprove an element ~~or amendment~~ that includes a transfer station or other facility solely because the facility does not contribute towards the jurisdiction's efforts to comply with Section 41780.

(c) If the board does not act to approve, conditionally approve, or disapprove an element ~~which that~~ the board has determined to be complete within 120 days, ~~or an amendment which the board has determined to be complete within 60 days,~~ the board shall be deemed to have approved the element ~~or amendment~~.

SEC. 11. Chapter 12.8 (commencing with Section 42649) is added to Part 3 of Division 30 of the Public Resources Code, to read:

CHAPTER 12.8. COMMERCIAL RECYCLING

42649. (a) It is the intent of the Legislature to require businesses to recycle solid waste that they generate.

1 (b) *It is the intent of the Legislature to allow jurisdictions*
2 *flexibility in developing and maintaining commercial recycling*
3 *programs.*

4 42649.1. *For the purposes of this chapter, the following terms*
5 *mean the following:*

6 (a) *“Business” means a commercial entity operated by a firm,*
7 *partnership, proprietorship, joint stock company, corporation, or*
8 *association that is organized as a for-profit or nonprofit entity, or*
9 *a multifamily residential dwelling of five units or more.*

10 (b) *“Commercial waste generator” means a business subject*
11 *to subdivision (a) of Section 42649.2.*

12 (c) *“Self-hauler” means a business that hauls its own waste*
13 *rather than contracting for that service.*

14 42649.2. (a) *On or before January 1, 2011, the owner or*
15 *operator of a business that contracts for solid waste services and*
16 *generates more than four cubic yards of total solid waste and*
17 *recyclable materials that are not solid waste per week shall*
18 *arrange for recycling services, consistent with state or local laws*
19 *or requirements, including a local ordinance or agreement,*
20 *applicable to the collection, handling, or recycling of solid waste,*
21 *to the extent that these services are offered and reasonably*
22 *available from a local service provider.*

23 (b) *A commercial waste generator shall take either of the*
24 *following actions:*

25 (1) *Source separate specified recyclable materials from solid*
26 *waste and subscribe to a basic level of recycling service that*
27 *includes the collection of those recyclable materials or specific*
28 *provisions for authorized self-hauling.*

29 (2) *Subscribe to an alternative type of recycling service that*
30 *may include mixed waste processing that yields diversion results*
31 *comparable to source separation.*

32 42649.3. (a) *Each jurisdiction shall implement a commercial*
33 *recycling program appropriate for that jurisdiction designed to*
34 *divert solid waste from businesses whether or not the jurisdiction*
35 *has met the requirements of Section 41780.*

36 (b) *If a jurisdiction already has a commercial recycling program*
37 *as one of its diversion elements that meets the requirements of this*
38 *section, it shall not be required to implement a new or expanded*
39 *commercial recycling program.*

1 (c) *The commercial recycling program shall be directed at a*
2 *business, as defined in subdivision (a) of Section 42649.1, and*
3 *may include, but is not limited to, any of the following:*

4 (1) *Implementing a mandatory commercial recycling policy or*
5 *ordinance.*

6 (2) *Requiring a mandatory commercial recycling program*
7 *through a franchise contract or agreement.*

8 (3) *Requiring all commercial recycling material to go through*
9 *a mixed processing system that diverts material from disposal.*

10 (d) *The commercial recycling program shall include education*
11 *and outreach to businesses.*

12 (e) *The commercial recycling program may include enforcement*
13 *and monitoring provisions.*

14 (f) *The commercial recycling program may include certification*
15 *requirements for self-haulers.*

16 (g) *The board shall review a jurisdiction's compliance with this*
17 *section as part of the board's review required by Section 41825.*

18 42649.4. (a) *If a jurisdiction adds or expands a commercial*
19 *recycling program to meet the requirements of Section 42649.3,*
20 *the jurisdiction shall not be required to revise its source reduction*
21 *and recycling element, or obtain the board's approval pursuant*
22 *to Article 1 (commencing with Section 41800) of Chapter 7 of Part*
23 *1.*

24 (b) *If an addition or expansion of a jurisdiction's commercial*
25 *recycling program is necessary, the jurisdiction shall update in*
26 *its annual report required pursuant to Section 41821.*

27 42649.5. (a) *This chapter does not limit the authority of a*
28 *local agency to adopt, implement, or enforce a local commercial*
29 *recycling requirement that is more stringent or comprehensive*
30 *than the requirements of this section or limit the authority of a*
31 *local agency in a county with a population of less than 200,000*
32 *to require commercial recycling.*

33 (b) *This chapter does not modify or abrogate in any manner*
34 *any of the following:*

35 (1) *A franchise granted or extended by a city, county, or other*
36 *local government agency.*

37 (2) *A contract, license, or permit to collect solid waste*
38 *previously granted or extended by a city, county, or other local*
39 *government agency.*

1 (3) *The existing right of a business to sell or donate its*
2 *recyclable materials.*

3 *SEC. 12. Section 42926 of the Public Resources Code is*
4 *amended to read:*

5 42926. (a) In addition to the information provided to the board
6 pursuant to Section 12167.1 of the Public Contract Code, each
7 state agency shall submit an annual report to the board summarizing
8 its progress in reducing solid waste as required by Section 42921.
9 The annual report shall be due on or before ~~September 1, 2009~~
10 *May 1, 2010*, and on or before ~~September~~ *May 1* in each subsequent
11 year. The information in this report shall encompass the previous
12 calendar year.

13 (b) Each state agency's annual report to the board shall, at a
14 minimum, include all of the following:

15 (1) Calculations of annual disposal reduction.

16 (2) Information on the changes in waste generated or disposed
17 of due to increases or decreases in employees, economics, or other
18 factors.

19 (3) A summary of progress made in implementing the integrated
20 waste management plan.

21 (4) The extent to which the state agency intends to utilize
22 programs or facilities established by the local agency for the
23 handling, diversion, and disposal of solid waste. If the state agency
24 does not intend to utilize those established programs or facilities,
25 the state agency shall identify sufficient disposal capacity for solid
26 waste that is not source reduced, recycled, or composted.

27 (5) Other information relevant to compliance with Section
28 42921.

29 (c) The board shall use, but is not limited to the use of, the
30 annual report in the determination of whether the agency's
31 integrated waste management plan needs to be revised.

32 *SEC. 13. No reimbursement is required by this act pursuant*
33 *to Section 6 of Article XIII B of the California Constitution because*
34 *a local agency or school district has the authority to levy service*
35 *charges, fees, or assessments sufficient to pay for the program or*
36 *level of service mandated by this act, within the meaning of Section*
37 *17556 of the Government Code.*

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**All matter omitted in this version of the bill
appears in the bill as amended in Senate,
September 2, 2009 (JR11)**

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